

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

MICHAEL A. RISPERS,

Petitioner,

DECISION and ORDER

-VS-

20-CV-6669-CJS-MJP

D. MILLER, *et al.*,

Respondents.

This case was referred to United States Magistrate Judge Mark W. Pedersen, pursuant to 28 U.S.C. § 636 for all pre-trial matters. On June 23, 2022, Magistrate Judge Pedersen issued an Order directing Petitioner to show cause by July 25, 2022 as to why this case should not be dismissed for failure to prosecute under L.R. Civ. P. 41(b) of the Western District of New York. ECF No. 52. The Clerk mailed the order to Petitioner at his address on the docket: Michael A. Rispers, 1412101398, Anna M. Kross Center (AMKC), Riker Island, 18-18 Hazen Street, East Elmhurst, NY 11370. *See* ECF No. 52 (Remark). The Order was not returned as undeliverable.

On July 28, 2022, Plaintiff having failed to respond to the Court's Order, Magistrate Judge Pedersen filed a Report and Recommendation recommending that the Court dismiss this action, and directing that any objections must be filed within fourteen (14) days after receipt of a copy of the Report and Recommendation. ECF No. 53. The Clerk of Court mailed Judge Pedersen's Report and Recommendation, again to Petitioner at his address on the docket: Michael A. Rispers, 1412101398, Anna M. Kross Center

(AMKC), Riker Island, 18-18 Hazen Street, East Elmhurst, NY 11370. ECF No. 54. No objections or requests for an extension have been filed and the deadline for objections has passed. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). However, on August 16, 2022, the Report and Recommendation was returned as “Undeliverable.” ECF No. 54.

Under L.R. Civ. P. 5.2(d), “[a] party appearing *pro se* must furnish the Court with a current address at which papers may be served on the litigant.” Further, the rule is clear that the litigant’s failure to “immediately” inform the Court, in writing, of any change of address “may result in the dismissal of the case, with prejudice.” L.R. Civ. P. 5.2(d). “While a *pro se* litigant’s pleadings must be construed liberally, . . . *pro se* litigants generally are required to inform themselves regarding procedural rules and to comply with them.” *Edwards v. INS*, 59 F.3d 5, 8 (2d Cir. 1995) (citations omitted).

While the Court could infer that Plaintiff’s failure to advise the Court of his forwarding address is a tacit abandonment of his claim, the Court will instead exercise its discretion and review this matter as if a general objection has been lodged to the Report and Recommendation. *Martin v. Wyckoff*, No. 916CV00717TJMTWD, 2019 WL 689081, at *1 (N.D.N.Y. Feb. 19, 2019). Under such circumstances, the Court reviews the record *de novo*. See 28 U.S.C. § 636(b)(1). After such a review, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge . . . [or] receive further evidence or recommit the matter to the magistrate judge with instructions.” *Id.*

The Court’s review of the record shows that from the time he filed his initial complaint in August 2020 (ECF No. 1) until the time that he filed his second motion to appoint counsel (ECF No. 42), Plaintiff was an active participant in his case. However,

despite several filings made by Defendants (*see, e.g.*, ECF Nos. 43, 47, and 49), and an order to show cause in June 2022 (ECF No. 52), Plaintiff has not made any filings or otherwise communicated with the Court since November 2021 (ECF No. 42). Moreover, two recent attempts by the Court to communicate with Plaintiff at the address listed on the docket have been returned as “undeliverable.” *See* ECF Nos. 51, 54.

Having reviewed the record *de novo* and reached conclusions consistent with those of Magistrate Judge Pedersen, the Court adopts Magistrate Judge Pedersen’s Report and Recommendation [ECF No. 53] in full and, for the reasons set forth in it, dismisses this action for failure to prosecute.

IT IS SO ORDERED.

Dated: September 14, 2022
Rochester, New York

ENTER:



CHARLES J. SIRAGUSA
UNITED STATES DISTRICT JUDGE